

**BOARD OF ADJUSTMENT MINUTES  
JUNE 8, 2005**

<b>PRESENT:</b>	George Berkley	Chairperson
	Don Peart	Board Member
	Marilyn Peterson	Board Member
	Jay Poelman	Board Member (Alternate)

<b>ALSO PRESENT:</b>	Jeff Leishman	Zoning Administrator
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**AGENDA:**

- APPROVAL OF AGENDA
- APPROVAL OF MINUTES FOR THE APRIL 13, 2005 MEETING.
- CASE #598 – REQUEST VARIANCE 1025 S 1250 E TANNEVISTA SUBDIVISION LOT 4 – SCOTT F. GARNER.

Meeting commenced at 5:32 P.M.

**Approval of Agenda:**

**Motion:**

Board Member Peterson motioned to approve the agenda. Seconded by Board Member Peart and the motion unanimously carried.

**Approval of Minutes:**

The minutes were not available for review.

**Motion:**

Board Member Peterson motioned to table approval of the April 13, 2005 minutes until the next meeting. Board Member Poelman seconded the motion and the motion unanimously carried.

Chairperson Berkley announced the agenda.

**CASE #598 – REQUEST VARIANCE 1025 S 1250 E TANNEVISTA SUBDIVISION LOT 4 – SCOTT F. GARNER**

Mr. Berkley invited Scott Garner to the table. Mr. Berkley asked Mr. Garner if he would like to wait or proceed with this action due to the fact that there was not a full Board to hear his case and discussed the appeal process. Mr. Garner stated that he would like to proceed.

This is a petition for a variance in the zoning ordinance. The Board must apply certain pre-established criteria to the problems that come before it. Based upon these criteria the Board is empowered to allow special variances or a technical violation of the City's zoning laws. The variances the Board is empowered to grant with the land conditions which are unique to the land and not self imposed. Regardless of the decision of this Board, however, the applicant or any affected person has the right to appeal the Board's decision to the District Court. The appeal period is 30 days after the Board's final decision. The appeal would typically be filed if the party believed the Board misinterpreted the law, the facts or used an arbitrary process in making its decision.

Mr. Berkley invited to the table all those who wanted to participate in the discussion and stated that if any in the audience wished to be heard, an opportunity would be granted to them to present their thoughts before the formal action was taken.

The Board's action must be a ruling based upon the facts presented at this hearing. The facts must stand by themselves. The applicant bears the burden of proving that all of the conditions justifying the variance have been met. The facts must be presented at this hearing. As part of the approval process, he emphasized, that these findings of fact must be included as part of the final motion. The final motion then is to either approve the petition based upon the facts presented or disapprove the petition based upon the lack of supporting evidence. The motion and decision will be recorded for future reference. Mr. Berkley asked Mr. Garner if he had any questions. Mr. Garner stated that he did not have any questions.

Mr. Leishman introduced the petition. This property is a 22-acre lot. He reviewed the contents of the packets that were given to the Board members. All the criteria have to be complied with. Mr. Garner is asking for a 40-foot variance rather than the 12-foot variance that was shown on the plan. Mr. Leishman received a call from a representative of the adjacent property owner. The Utah Division of Wildlife habitat manager, Pamela Kramer, she stated that she and the Division are in support of this request as an adjacent neighbor. There were no additional comments from any other neighbors.

Mr. Garner was then asked to present his information to the Board. Using pictures, he showed the Board where the home would be located. He asked if the Board members had reviewed the information he had provided. He felt that he covered the five criteria as closely as he could, as well as answer the requirements of chapter 29.14.10. The property is 20-acres but only about 10-percent of that is suitable for building. Most of the property is taken up by steep slopes on the east and west. There is 30-foot wide natural gas pipeline easement that goes right down through the center of the most level portion of the lot. He also had to dedicate a 10-foot power easement to Brigham City Power in order to run his underground conduit to the far end of the property where the home site is. That easement runs parallel to the 30-foot gas line easement. He has 40-feet worth of easements that run down the center of the semi-flat buildable piece of ground. That really minimizes the area where he is able to fit the home he wants to build. The power line easement was put on the east side so he didn't have to bother with Questar. A surface pond was put in to collect water from the spring which is going to provide irrigation water for the pasture that will be there and was supposed to be the collectable water point for the fire hydrant so fire trucks could pull up to the hydrant at the base of the pond to hook up if needed. The location of the pond dictated the location and elevation of the driveway and the driveway would run into the home site. He thought there would be more space for the house but there is not. When he found out he had to have a sixty-foot setback on the south end, it pushed the house even closer to where the pond is and the driveway point where fire trucks would potentially need to go.

Mr. Berkley asked if everyone was comfortable with the written text Mr. Garner had supplied and if they had a chance to look at it or if they would rather have a verbal recitation of it to refresh their memories. Mr. Leishman explained the elevations on the topological map. The contour map helped to show the steepness of the area. In reality, there is not a lot of property to build on because of the very steep incline.

The easement has been there since the subdivision was originally created and it is considered part of the land. It is owned by Mr. Garner but the right of usage is vested with the gas company, Questar. The house will be pushed up right to the edge of the easement. The home will not be inside of the Brigham City easement at all. The easement on the west side is preexisting prior to the purchase the property. Mr. Leishman discussed the differences between the different zones within the City. This subdivision is a planned district. In a P-district a zoning district is created and within that zoning district in the ordinance it states what uses can be had in that zone. The underlying M-U-160 brings in the standards for those uses. This is a zoning district which has an overlay on top of it.

Mr. Berkley asked if anyone in the audience would care to make any comments.

There was no further discussion.

**Motion:**

Board Member Peterson motioned to approve CASE #598 – REQUEST VARIANCE / 1025 S 1250 E / TANNEVISTA SUBDIVISION LOT 4 - SCOTT F. GARNER in consideration of a variance for the term of the zoning ordinance addressing issue number one; literal enforcement of the zoning ordinance would cause an unreasonable hardship due to the fact of the slope and inaccessibility. Number two; there are special circumstances that are attached to the property which is the topography and the sloping. Number three; granting the variance is essential to enjoyment of the property because Mr. Garner is so limited in his choice as to where to build his home. Number four; the variance will not substantially affect the General Plan as it has already been considered suitable for a single family dwelling and it is not contrary to the public interest. Number five; the spirit of the zoning ordinance is observed as the easements have been vacated and Mr. Garner has worked with those concerned. Board Member Peart seconded the motion.

There was discussion of the number five easements and a recommendation was made to Board Member Peterson to revise her motion to state the easements are another restriction of the property.

**Amended Motion:** Board Member Peterson asked Chairman Berkley if it could be included in her motion that part of the special circumstance for this property not only be topography but the easements which are fairly substantial and also restricts the use of the property. Board Member Peart seconded the motion and the motion unanimously carried.

**Motion:**

Board Member Peart motioned to adjourn. The motion was seconded by Board Member Poelman and the motion unanimously carried.

The meeting adjourned at 6:18 PM.

This certifies that the minutes of June 8, 2005 are a true, full and correct copy as approved by the Board of Adjustment on \_\_\_\_\_.

Signed: \_\_\_\_\_  
Jeffery R Leishman - Secretary